

Federal Communications Commission

DA 00-1109

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Tuscola and Clio, Michigan )

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MM Docket No. 99-115  
RM-9378

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**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: May 10, 2000****Released: May 19, 2000**

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Faircom Flint Inc. ("Faircom"), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 6275 (1999), requesting the reallocation of Channel 268A from Tuscola, Michigan to Clio, Michigan.<sup>1</sup>

Faircom requests modification of the license for Station WWBN to specify operation on Channel 268A at Clio as the new community of license. Regent Licensee of Flint, Inc. ("Regent") filed comments in which it reaffirmed its interest in Channel 268A at Clio.<sup>2</sup> The MacDonald Broadcasting Company ("MacDonald") filed an opposition to the Notice. Regent filed reply comments.

2. The proposed reallocation of Channel 268A from Tuscola to Clio, Michigan, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recond. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community").

As explained in the Notice, Faircom requested the reallocation of Channel 268A from Tuscola to the community of Clio as a first local service under priority (3) of the allotment priorities.<sup>3</sup> Faircom

<sup>1</sup> Channel 269A was allotted to Tuscola, Michigan, in MM Docket 84-13 in response to a petition filed by Robert A. Sherman. See 49 FR 45142, November 15, 1984. In MM Docket No. 95-7, 11 FCC Rcd 11286 (1996), at the request of Faircom Flint, Inc., Channel 268A was substituted for Channel 269A at Tuscola, to allow Station WWBN to increase power to six kilowatts and move its transmitter site. Faircom Flint indicated the population served would increase from 106,605 people to 365,429 people as a six kilowatt facility on Channel 268A.

<sup>2</sup> An assignment of license for Station WWBN from Faircom to Regent was consummated on June 15, 1998.

<sup>3</sup> The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local

acknowledged that while its proposal would provide a first local aural transmission service to the larger community of Clio, the proposal would remove the sole local operating service from Tuscola. In support of this removal, Faircom pointed out that Station WWBN would provide service to an additional 186,714 people which represents a 110 percent increase in population coverage. Faircom further stated that the reallocation would not remove service from a rural area to serve an urban area and that Tuscola would continue to receive city-grade service from Station WWBN as the 70 dBu signal from Channel 268A would continue to cover the entire Tuscola area. Faircom was requested to provide any additional information as to the overall public interest benefits that would result from the reallocation of Channel 268A from Tuscola to Clio.

3. MacDonald opposes the reallocation of Channel 268A from Tuscola to Clio. According to MacDonald, Station WWBN at Clio would be operating within the urbanized area of Flint, Michigan. MacDonald argues that the reallocation will move a station from an underserved rural area to a well-served urbanized area. According to MacDonald, the residents of Clio receive ample radio coverage from 12 Flint-based radio stations while Tuscola will lose its only local service.

4. In reply comments, Regent argues that MacDonald fails to establish reasons to deny the reallocation of Channel 268A from Tuscola to Clio and that MacDonald's comments are merely an attempt to avoid competition.<sup>4</sup> Regent contends that the reallocation will more than double the number of persons receiving service from Station WWBN and that the approximately 100 residents of Tuscola will continue to receive the same level of service currently provided by the station. Regent acknowledges that the reallocation will remove Tuscola's only local service. However, Regent argues that Tuscola is not a community for allocation purposes as it is neither a city nor census-designated place and that the area encompasses no more than a small grouping of streets. Unlike Tuscola, Clio has a 1990 population of 2,629 people and Regent believes that a comparison of the two communities for a first local service preference would generally favor the larger populated community. Here, according to Regent, the reallocation will provide a new service to 8,000 people when the channel is reallocated to the larger community of Clio. In addressing MacDonald's comments concerning a move from rural to urban community, Regent states that only 3.7% of the Flint Urbanized Area would receive city-grade coverage from the proposed reference coordinates of Station WWBN. Regent states that Clio is within the boundaries of the Flint Urbanized Area by means of a narrow corridor connecting Clio to the Urbanized Area which consists primarily of a railroad route. In any event, Regent believes that although it is not necessary, ample information was provided by Faircom in its initial petition to support a Tuck showing.<sup>5</sup> While MacDonald refers to twelve stations serving the

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service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

<sup>4</sup> According to Regent, MacDonald operates five AM and 5 FM stations in Michigan: WILS(AM) and WHZZ(FM) in the Lansing market, WSAM(AM), WKCQ(FM) and WEEG(FM) in the Saginaw market, and WLXT(FM), WLXV(FM), WKHQ(FM), WMBN(AM), WMKE(AM) and WATT(AM) in the Northwest Michigan market. In addition, it operates a six-county Muzak franchise. Regent directs us to Radio Business Report, Source Guide and Directory, Vol. 7 (1999).

Flint radio market, Regent points out that Clio does not receive service from stations WDZZ-FM, WFUM-FM, WGRI(FM) and WWCK while Stations WFLT and WFNT provide only daytime service to Clio and Station WSNL has proposed to cease its licensed nighttime operations. Regardless of how much service Clio may receive from other stations licensed to other communities, Regent believes that the numerous benefits of the proposed reallocation with no meaningful reduction of coverage to Tuscola, present a unique and compelling case for reallocation.

5. To conclude this proceeding, we must evaluate the comparative merits of providing Clio with its first local aural service while removing the only local service at Tuscola. In considering a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments. This we do by comparing the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities. See Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities"), 90 FCC 2d 88 (1982). In making this determination, we find that Clio (population 2,629 people) would receive its first local service which falls under priority (3) and that retention of Channel 268A in Tuscola (population approximately 100) also falls under priority (3). We note that Regent has proposed a new site for Station WWBN which is .48 kilometers (.3 miles) south of its current site. A staff engineering analysis indicates that at the new site, 63,964 people will lose service and 257,091 people will gain a new service with the gain and loss areas being served by five or more services. Our analysis also shows that the 70 dBu contour at the proposed site provides coverage to 5.1% of the Flint Urbanized Area and 7.6% of the Saginaw Urbanized Area and that at the current site as well as the proposed site, the 60 dBu contour of Station WWBN will provide service to the Flint and Saginaw Urbanized Areas. Pursuant to the FM allotment priorities, Regent's proposal would normally be favored because its adoption would provide a first local transmission service under priority (3) to the larger community of Clio than would occur by retaining the station at Tuscola. The Commission indicated in the "Change of Community Order" that under some very limited circumstances it would consider that the removal of a sole local service may be justified if there are compelling public interest factors to offset the expectation of continued service.

However, we do not find that situation is applicable here where both the existing and proposed arrangement of allotments trigger the same allotment priority. As stated in Modification of License MO&O,

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from

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<sup>5</sup> Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). In its initial petition, Faircom provided the following information to demonstrate that Clio is an independent community. Clio is an incorporated community with a mayor and city council form of government. Clio has its own volunteer fire department and police department, library, post office and zip code (48420). Clio offers its residents a diverse selection of municipal services, over 300 businesses which belong to the Clio Area Chamber of Commerce. Clio has numerous recreational facilities such as the Ligon Outdoor Center, Vienna Greens Golf Course, Art Center and Amphitheater, and a local theater group. The Genesee County Herald, a weekly newspaper is published in Clio. There are over a dozen houses of worship of various faiths established within Clio, numerous dentists, attorneys, physicians and veterinarians serving the community as well as nursing homes, convalescent homes and an industrial park. Clio has its own elementary school and local high school. Faircom provided the names and addresses of business members of the Clio Area Chamber of Commerce.

allotting a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both.

In consideration of the above, we cannot find that the reallocation of Channel 268A from Tuscola to Clio, Michigan, provides a public interest benefit of enough significance to outweigh the loss of the sole local service to Tuscola or offset the disruption of an existing service. In making this determination, we find that the difference in population between the two communities does not, by itself, justify the removal of the sole local service from Tuscola. The Notice specifically requested Faircom to provide additional information as to the overall public interest benefits that would result from the reallocation of Channel 268A from Tuscola to Clio, and Faircom and Regent failed to provide this information. Faircom and Regent merely restated support for the reallocation, indicating that the proposed reallocation presents a preferable allocation and utilization of spectrum with no meaningful reduction of coverage to Tuscola.

6. Accordingly, IT IS ORDERED, That the petition for rule making filed by Faircom Flint, Inc. and Regent Licensee of Flint, Inc. to reallocate Channel 268A from Tuscola, Michigan, to Clio, Michigan, IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
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